

APPEAL NO. 031093
FILED JUNE 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 1, 2003. The hearing officer decided that he did not have jurisdiction to determine whether the appellant (claimant herein) had disability prior to July 23, 2002, and that claimant did not have disability from July 23 through October 10, 2002. The claimant contended that the hearing officer had the authority to determine whether or not she had disability from February 19 through October 10, 2002, and that the evidence established that she had disability for this period. The respondent (carrier herein) argues that the hearing officer correctly determined that he lacked the authority to determine disability prior to July 23, 2002, as this issue had previously been finally decided and that he did not err in finding the claimant did not have disability from July 23 through October 10, 2002.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

First, we note that the same hearing officer in this case previously considered the issue of disability in a prior CCH on July 23, 2002. At that time the hearing officer resolved the issue of disability by finding that the claimant had disability from December 4, 2001, through February 18, 2002. The Appeals Panel affirmed the hearing officer's decision in Texas Workers' Compensation Commission Appeal No. 022087, decided September 23, 2002. It was undisputed at the present hearing that no judicial review had been sought from the decision of the Appeals Panel in Appeal No. 022087.

It is clear that the hearing officer at the prior CCH had made a determination concerning the claimant's disability from her December 4, 2001, injury through July 23, 2002; that this determination had been affirmed by the Appeals Panel; and that the decision of the Appeals Panel had become final. Therefore, the hearing officer did not err in the present case by finding he lacked authority to revisit the issue of disability prior to July 23, 2002. See Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993.

As far as the issue of disability from July 23 through October 10, 2002, is concerned, there was conflicting evidence concerning whether or not the claimant had disability during this period. Disability is a question of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974,

no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to overturn the hearing officer's determination that the claimant did not have disability from July 23 through October 10, 2002.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge